

**DISTRICT OF COLUMBIA**  
**DOH Office of Adjudication and Hearings**  
825 North Capitol Street N.E., Suite 5100  
Washington D.C. 20002

DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH  
Petitioner,

v.

CLEVELAND SOUTHEASTERN TRAILS  
Respondent

Case No: I-00-11115  
I-00-11239

DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH  
Petitioner,

v.

CLEVELAND SOUTHEASTERN TRAILS  
Respondent

Case No: I-00-11116  
I-00-11240

DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH  
Petitioner,

v.

CLEVELAND SOUTHEASTERN TRAILS  
Respondent

Case No: I-00-11117  
I-00-11238

DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH  
Petitioner,

v.

CLEVELAND SOUTHEASTERN TRAILS  
Respondent

Case No: I-00-11118  
I-00-11237

## **FINAL ORDER**

### **I. Introduction**

These consolidated cases arise under the Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801.01 *et seq.*) and Title 20 Chapter 9 of the District of Columbia Municipal Regulations (“DCMR”). By Notices of Infractions (Nos. 00-11115, 00-11116, 00-11117 and 00-11118) served on May 18, 2001, the Government charged Respondent Cleveland Southeastern Trails with violating the provisions of 20 DCMR 900.1. Section 900.1 prohibits, with certain exceptions, motor vehicles from idling their engines for more than three minutes while parked, stopped or standing. The Notices of Infraction charged that four buses owned by Respondent (identified in the Notices of Infraction as having Ohio license plate numbers AWC-1730, AHS-7200, AJQ-7526 and AHS-7199) violated § 900.1 on May 11, 2001 while parked at Anacostia Park, S.E., and sought a fine of \$500 for each violation, for a total of \$2,000.

Respondent failed to answer the Notices of Infraction within the allotted time period (fifteen days plus five days for mailing pursuant to D.C. Official Code §§ 2-1802.02(e) and 2-1802.05). Accordingly, on June 19, 2001, this administrative court issued orders finding Respondent in default with respect to each of the four issued Notices of Infraction, assessing statutory penalties in the total amount of \$2,000 pursuant to D.C. Official Code § 2-1801.04(a)(2)(A), and requiring the Government to issue second Notices of Infraction pursuant

to D.C. Official Code § 2-1802.02(f). The Government served the second Notices of Infraction (Nos. 00-11237, 00-11238, 00-11239 and 00-11240) on July 2, 2001.

On July 17, 2001, Respondent filed untimely pleas of Admit pursuant to D.C. Official Code § 2-1802.02 to the first Notices of Infraction. Accompanying Respondent's pleas was a check (No. 8886) in the amount of \$2,000. On July 18, 2001, this administrative court received a letter from Respondent's Safety Director, Gene Covington, requesting a reduction or suspension of the assessed statutory penalties in each of the cases. In support of Respondent's request, Mr. Covington explained that he had misunderstood the instructions on the Notices of Infraction, believing that the fifteen day answer period referenced in the Notices related to the time in which the pre-scheduled hearing date listed on the Notices should be accepted, and that payment of the fines sought by the Government would be timely so long as it was submitted prior to the pre-scheduled hearing date.<sup>1</sup>

By order dated July 25, 2001, I permitted the Government to respond to Respondent's request for a reduction or suspension of the assessed statutory penalties. The Government elected not to respond. Accordingly, this matter is now ripe for a decision.

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<sup>1</sup> The pre-scheduled hearing date on each of the Notices of Infraction was July 17, 2001.

## **II. Findings of Fact**

1. By its pleas of Admit, Respondent has admitted violating the provisions of 20 DCMR 900.1 on May 11, 2001 at the Anacostia Park, S.E. with respect to four of its buses, identified in the captioned Notices of Infraction as having Ohio license plate numbers AWC-1730, AHS-7200, AJQ-7526 and AHS-7199.
2. On May 11, 2001, four of Respondent's buses (identified in the Notices of Infraction as having Ohio license plate numbers AWC-1730, AHS-7200, AJQ-7526 and AHS-7199) idled their engines for more than three minutes while parked at the Anacostia Park, S.E.
3. Respondent failed to answer the first Notices of Infraction (Nos. 00-11115, 00-11116, 00-11117 and 00-11118) within twenty days of their May 18, 2001 service date.
4. On July 17, 2001, Respondent submitted its pleas of Admit to the charge set forth in the first Notices of Infraction, along with a check (No. 8886) in the amount of \$2,000.
5. On July 18, 2001, this administrative court received a letter from Respondent's Safety Director, Gene Covington, requesting on behalf of Respondent a reduction or suspension of the assessed statutory penalties in each case.
6. Mr. Covington misunderstood the instructions on the Notices of Infraction, believing that the fifteen day answer period referenced in the Notices related to the time in which the pre-scheduled hearing date should be accepted, and that

payment of the fines sought by the Government would be timely so long as it was submitted prior to the pre-scheduled hearing date of July 17, 2001.

### **III. Conclusions of Law**

1. Respondent's buses (identified in the Notices of Infraction as having Ohio license plate numbers AWC-1730, AHS-7200, AJQ-7526 and AHS-7199) violated the provisions of 20 DCMR 900.1 on May 11, 2001. A fine of \$500 is authorized for a first offense of each of these violations, for a total of \$2000. Respondent has paid those fines in full. *See* 16 DCMR §§ 3201.1(b)(1), 3224.3(aaa).
2. Respondent has requested a reduction or suspension of the assessed \$2,000 statutory penalty. If a respondent fails without good cause to answer a Notice of Infraction within the allotted time period (fifteen days from service plus five days for mailing pursuant to D.C. Official Code §§ 2-1802.02(c), 2-1802.05), a statutory penalty equal to the amount of the fine shall be assessed. D.C. Official Code § 2-1801.04(a)(2)(A).
3. Respondent did not answer the first Notices of Infraction within twenty calendar days of those Notices' May 18, 2001 service date. D.C. Official Code §§ 2-1802.02(e) and 2-1802.05. Instead, Respondent submitted pleas of Admit and a \$2,000 payment approximately two months later.
4. Respondent's explanation that it believed it had fifteen days to accept the pre-scheduled hearing date of July 17, 2001 in these cases or, in the alternative, pay the listed fines by that date, is unreasonable given the clear instructions on the

face of the Notices of Infraction, including a warning, in bold typeface, appearing at the bottom of the Notices, which provides in relevant part:

**WARNING: Failure to answer (see reverse) each infraction on this Notice within 15 days of the date of service will result in assessment of a penalty equal to and in addition to the specified amount of the fine. . . .**

Indeed, Respondent's belief that it had fifteen days in which to "accept" the pre-scheduled hearing date is wholly at odds with the instructions on the Notices of Infraction regarding the pre-scheduled hearing. These instructions provide: "**IF YOU DENY** one or more of the infraction(s), you **must** appear before [an] administrative judge for a hearing pre-scheduled on the [17<sup>th</sup> day of July 2001 at 9:15 AM] (emphasis in original and supplied).

5. Accordingly, Respondent has failed to demonstrate good cause for failing to timely answer the first Notices of Infraction (Nos. 00-11115, 00-11116, 00-11117 and 00-11118) and the previously assessed statutory penalties of \$2,000 shall therefore be imposed without reduction. D.C. Official Code § 2-1802.02(f); *see also DOH v. Isle of Patmos Child Development Center*, OAH No. I-00-40239 at 7-8 (Final Order, March 8, 2001) (concluding Respondents' belief that responding to Notice of Infraction on pre-scheduled hearing date constituted a timely response was unreasonable given clear warning on Notice of Infraction, and therefore did not establish good cause for untimely response); *DOH v. JV Trucking*, OAH No. I-00-10445 at 5; (Final Order, February 28, 2001) (same); *DOH v. Watergate Fitness Center*, OAH No. I-00-30137 at 4-6 (Final Order, December 13, 2000) (same).

#### **IV. Order**

Based upon the foregoing findings of fact and conclusions of law, and the entire record of this case, it is, hereby, this \_\_\_\_ day of \_\_\_\_\_, 2002:

**ORDERED**, that Notices of Infraction (Nos. 00-11237, 00-11238, 00-11239 and 00-11240) are hereby **DISMISSED AS MOOT**; and it is further

**ORDERED**, that Respondent shall pay statutory penalties in the total amount of **TWO THOUSAND DOLLARS (\$2,000)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

**ORDERED**, that, if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

**ORDERED**, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-

1802.03(f), the placement of a lien on real or personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

**/s/      04/01/02**

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Mark D. Poindexter  
Administrative Judge